

Applicants elect, with traverse, Group I, Claims 2-11, 18 and 1, 12-17, 19-21 (all in part) wherein F is formula (4), drawn to 1,4-DHPs. With the election of Group I, Applicants note that an election of Species is not required. In the event that the Examiner later determines that an election of Species is, in fact, required, Applicants elect, with traverse, the compound of Example 12 (the structure of which is shown on page 117 of the specification). Claims 2-11, 18 and 1, 12-17, 19-21 read on the elected species.

The Office has characterized the inventions of Groups I-II as unrelated in chemical structure and lacking a common core. However, Applicants note that the compounds of the present invention do share a common core: formula (I). Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Accordingly, Applicants respectfully submit that the Restriction Requirement should be withdrawn.

Applicants traverse the Restriction Requirement on the grounds that the Office has not shown that a burden exists in searching all the claims of the present application.

Moreover, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all claims would not constitute a serious burden on the Office.

Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness. Rather, the Office has merely stated the conclusion.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples

to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election of Species Requirement. Withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No.: 24,618

Vincent K. Shier, Ph.D.
Registration No.: 50,552



22850

PHONE NO.: (703) 413-3000
FAX NO.: (703) 413-2220
NFO:VKS
E:\217408US0CONT-RE resp.wpd